

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made as of this 21 day of June, 2006, between WF Hunt, LLC, a Virginia limited liability company ("Developer"), and Transurban (895) LLC, a Delaware limited liability company ("T895").

### **WITNESSETH:**

WHEREAS, Pocahontas Parkway Association, a Virginia nonstock nonprofit corporation ("PPA"), is the operator of the approximately nine-mile, four lane, limited access tollway and certain related improvements extending from the current eastern terminus of Chippenham Parkway (State Route 150) at I-95 to a connection with I-295 southeast of Richmond International Airport known as the Pocahontas Parkway (the "Project");

WHEREAS, T895 and PPA have entered into a asset purchase agreement dated June \_\_, 2006 (the "Asset Purchase Agreement"), pursuant to which T895 has agreed to purchase and PPA has agreed to sell, subject to satisfaction of applicable conditions precedent, all of the assets, properties and rights of PPA pertaining to the management, operation and maintenance of the Project, expected to close on June 22, 2006;

WHEREAS, Developer desires to construct a development known as Wilton on James (the "Development") and, accordingly, it is desirable to construct the New Interchange (as defined below) connecting the Development to the Project to accommodate vehicular traffic to and from the Development;

WHEREAS, Developer and T895 desire to set forth their agreements with regard to the New Interchange;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

### **ARTICLE I** **DEFINITIONS AND USAGE**

Section 1.01 Definitions. Unless the context shall otherwise require or the express terms of this Agreement shall otherwise provide, capitalized terms used in this Agreement shall have the following meanings:

"Affiliate" means, with respect to any party, any Person directly or indirectly controlling, controlled by or under common control of such party.

"Agreement" has the meaning set forth in the preamble.

"Approval" means any written endorsement, consent, approval, or determination by any Person.

"ARCA" means that portion of the Amended and Restated Comprehensive Agreement (Relating to the Grant of a Permit) to Develop and Operate the Route 895 Connector, to be entered into by the Department (as defined below) and T895 on the Effective Date, attached hereto and incorporated herein as Appendix D..

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in Richmond, Virginia are not open for business.

"Completion Certificate" means a certificate delivered by Developer to T895 pursuant to Section 2.06 certifying that all Work has been completed.

"Completion Date" means the date on which T895 approves the Completion Certificate in accordance with the provisions of Section 2.06 or Developer has obtained all required Governmental Approvals for the opening of the New Interchange ramps for regular public use, whichever is later, but in no event shall the definition of "Completion Date" refer to, include or be conditioned upon completion of the New Tolling Facilities (as defined below) to be installed by T895.

"Defect Completion Certificate" means a certificate issued by T895 to Developer pursuant to Section 3.01 certifying that all remedies associated with the provisions of that Section have been completed.

"Department" means the Virginia Department of Transportation.

"Developer" has the meaning set forth in the preamble.

"Developer's Assignee" means a financing entity commonly known as a "Community Development Authority" that Developer may choose to assist in financing the New Interchange and that may become a third party assignee or representative of Developer in order to effectuate such financing.

"Effective Date" means the date on which T895 closes upon the acquisition of the assets, properties and rights of T895 pertaining to the management, operation and maintenance of the Project pursuant to the Asset Purchase Agreement.

"Environmental Clearance" means any Approval obtained pursuant to or required by Environmental Laws.

"Environmental Laws" means all Governmental Rules now or hereafter in effect relating to the environment (including restrictions on noise and the generation of dust and other pollutants) or to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air).

"Events of Default" has the meaning set forth in Section 8.01.

"GAAP" means generally accepted United States accounting principles; consistently applied.

"Good Industry Practice" shall mean in respect of Developer, the degree of care, skill and diligence, and those practices, methods, techniques and standards, that would reasonably be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as described in this Agreement, under the same or similar circumstances and conditions as those applying to the design, development and construction of the New Interchange.

"Governmental Approval" means any Approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration, opinion or ruling, as amended, supplemented or modified, required by or with any Governmental Authority (including all Environmental Clearances) in connection with the design, construction and operation of the New Interchange.

"Governmental Authority" means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

"Governmental Rule" means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereafter in effect.

"Hazardous Substances" means any: (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (b) any hazardous, toxic, harmful or dangerous substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil including petroleum products and wastes; and (d) asbestos.

"Major Maintenance" means the replacement, reconstruction or upgrading as a result of an item including pavements, structures, equipment and systems reaching the end of their useful life.

**"New Interchange"** means (i) a new offramp from the westbound lanes of the Project just east of the mainline toll plaza, leading to the Development; (ii) a new onramp leading from the Development onto the westbound lanes of the Project just west of the mainline toll plaza; (iii) a new offramp from the eastbound lanes of the Project just west of the mainline toll plaza, leading to the Development; and (iv) a new onramp leading from the Development onto the eastbound lanes of the Project just east of the mainline toll plaza, together with the New Tolling Facilities. The preliminary design and specifications of the New Interchange and a map showing the location of the New Interchange is attached as Appendix A.

**"New Tolling Facilities"** means the permanent tolling facilities installed by T895 at the New Interchange in accordance with Section 2.01(b) of this Agreement.

**"Person"** means any individual, corporation, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or Governmental Authority.

**"T895 Review Period"** means the twenty (20) Business Day period following the submission to T895 by Developer of all designs and all other drawings (including plans, elevations, sections, details and diagrams), specifications, reports, graphs, sketches, calculations, records, models, submittals, maps and other documents prepared or to be prepared by or on behalf of Developer in both hard copy and electronic format in relation to the final design of the New Interchange, but in no event will the T895 Review Period terminate prior to T895's receipt of all necessary Department approvals.

**"Routine Maintenance"** means activities undertaken to ensure the Project is operated in a safe and efficient manner including repairs, replacements using spare parts and regular upgrades relating to software, but excluding the activities undertaken as Major Maintenance.

**"Work"** means all planning, design, construction, procurement, engineering and testing services and all labor, equipment and materials required to construct and complete the New Interchange in accordance with the requirements of this Agreement, and all warranty work to be performed by Developer in accordance with its warranty obligations under this Agreement.

## **ARTICLE II**

### **RESPONSIBILITIES; OBLIGATIONS; COVENANTS; AGREEMENTS**

Section 2.01 (a) **General Developer Obligations.** Except as provided in paragraph (b) of this Section 2.01, Developer shall, at its sole cost and expense, diligently perform all activities and tasks and provide such labor, services, tools, materials and equipment (other than such activities or tasks expressly identified as an obligation solely of T895 in this Agreement) necessary to design, engineer, develop, install, construct, commission and complete the New Interchange in accordance with this Agreement, Good Industry Practice and Governmental Rules, all in a good and workmanlike manner and free from defects. The Developer shall carry out and coordinate all such activities and tasks so as to minimize the disruption to the Operator's operation of the Project.

(b) **Toll Systems for New Interchange.** T895 will design, construct, install, test and commission the New Tolling Facilities, configured to accommodate Smart Tag/EZ Pass, for the New Interchange. T895 shall obtain at least two (2) bids for such work. All costs for the design,

construction, procurement, testing, commissioning and configuration of the tolling system to accommodate the New Interchange will be at Developer's cost or Developer's Assignee, and payment as instructed by T895 for all such costs shall be remitted within thirty (30) days of receipt of an invoice from T895; provided, that if T895 accepts other than the lowest conforming bid from reputable companies, Developer's or Developer's Assignee's reimbursement for the work covered by such lowest bid shall be upon the payment terms contained in such lowest bid. Developer shall have the right to review and approve all bids used in the procurement of the aforementioned services and materials (such approval not to be unreasonably withheld, conditioned or delayed) and shall have the right, in its reasonable discretion, to object to any unreasonable costs invoiced by T895. Developer shall have no obligation with respect to the tolling facilities now or hereafter located on the main line.

Section 2.02 Further Developer Obligations. Without limiting the generality of Section 2.01, Developer's obligations hereunder shall include, at its sole cost and expense, the following:

- (a) design, construction, engineering, development, installation, testing and commissioning of the New Interchange and the provision of such labor, equipment, material and other items, whether of a temporary or permanent nature, required for such design, construction, engineering, development, installation, testing and commissioning, including provision of any necessary goods, services or activities in strict accordance with Governmental Rules, all professional engineering principles and construction practices generally accepted as standards of the industry in the Commonwealth of Virginia, Good Industry Practice and the other requirements of this Agreement and the ARCA;
- (b) purchasing or otherwise acquiring all right of way and other real property interests necessary for the New Interchange;
- (c) obtaining, maintaining, and paying all fees associated with, all Governmental Approvals necessary for the New Interchange;
- (d) complying with the requirements set forth in Appendix B;
- (e) complying with all Governmental Rules applicable to the New Interchange;
- (f) liaising with the Department and all other Governmental Authorities having jurisdiction over the New Interchange or any part thereof;
- (g) procuring and maintaining in full force and effect for the construction phase of the New Interchange insurance coverage in such amounts and with such terms as set forth in Appendix C, and further including from the commencement of construction to the Completion Date, Builder's Risk Insurance at replacement cost for material, supplies, equipment, machinery and fixtures that are or will be part of the New Interchange (including coverage as to right to partial occupancy, boiler and machinery, earth movement and flood and naming T895 and the Department as additional insureds on a primary, non-contributory basis);
- (h) planning, scheduling and completing the Work in a manner that will minimize any interference with or hindrance of the performance of T895, other contractors or

subcontractors employed by T895 on or near the Project, of work being performed on real property adjacent to the Project, and taking all reasonable steps to coordinate the performance of the obligations hereunder with the activities of such Persons; provided, however, that T895 shall make reasonable efforts and accommodations in its work schedule, and T895 and Developer shall mutually coordinate work schedules, so that such interference may be reduced;

(i) providing to T895 work programs for the performance of the Work, method statements and other schedules in accordance with this Agreement and otherwise as and when reasonably requested by T895, including detailed schedules for performance of work requiring coordination with T895 or affecting the operation of the Project, such as any proposed lane closure or utility relocation;

(j) meeting with T895 and others monthly prior to the Completion Date; and

(k) to the extent in Developer's possession and control or obtainable by commercially reasonable efforts, furnishing such documents or information related to the foregoing as reasonably requested by T895.

Section 2.03 Developer Obligations in Connection with Related Agreements.

(a) Developer acknowledges that the Department shall have the right at all times to monitor, review, manage, administer or audit the work or performance of the Developer hereunder respecting all aspects of the design, permitting, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the New Interchange. Developer shall use commercially reasonable efforts to cooperate with the Department to facilitate its conduct of such activities. Developer agrees to participate in meetings between T895 and the Department, upon the Department's reasonable request.

(b) To the extent that it is the obligation of T895 to submit certificates, drawings, notices, schedules or other documents or data in connection with the design, construction or completion of the Work to the Department under the ARCA or any of T895's other delivery obligations under this Agreement are required to be submitted by T895 to any third party, Developer shall submit the same to T895 within twenty (20) Business Days following written request by T895 so that T895 may submit such document to such party in the manner and within the time prescribed therefor in the ARCA or other applicable agreement. Developer shall meet the Department's technical specifications with respect to the Work.

(c) Developer acknowledges and agrees that no liens, claims or charges of Developer or its contractors or subcontractors at any time shall attach to any interest of Department in the Project or the Project right of way.

(d) Developer shall cooperate with T895 with respect to documentation reasonably necessary to obtain, maintain and replace financing relating to the Project, including making information available to T895's or T895's lenders or prospective lenders to facilitate financing relating to the Project. Within ten (10) Business Days following written request by T895, Developer shall enter into a consent and agreement reasonably requested by such lenders, provided, T895 shall be responsible for all Developer's costs and expenses associated with such

consent and agreement, including, but not limited to, attorneys' fees. Developer's obligations under this section 2.03(d) shall terminate on the Completion Date.

Section 2.04 Design; Approval. Developer shall submit to T895 for its Approval all designs and all other drawings (including plans, elevations, sections, details and diagrams), specifications, reports, graphs, sketches, calculations, records, models, submittals, maps and other documents prepared or to be prepared by or on behalf of Developer in both hard copy and electronic format in relation to the final design of the New Interchange. During the T895 Review Period, T895 shall give written notice to Developer of T895's acceptance of such documents or object to such documents. If T895 objects to any documents provided by Developer, T895 shall within the T895 Review Period provide to Developer a list of T895's specific objections, as well as a list of specific modifications that, if implemented, will eliminate T895's objections, except that such proposed modifications shall not be in violation of any Governmental Rule. Developer shall not commence any of the Work until it receives T895's Approval and the Approval of the Department. Notwithstanding any review of Approval by T895 or the Department, Developer shall remain fully responsible to perform the Work prior to the Completion Date in accordance with this Agreement, and the Department or T895 may reject any Work that fails to comply with the requirements of this Agreement, whether or not previous reviews, tests, inspections or Approvals were given or conducted by the Department, T895 or any other person.

Section 2.05 Schedule of Work. Developer will use diligent efforts to all necessary or appropriate Governmental Approvals for the Work as promptly as is feasible. Developer will proceed promptly to complete the Work in a timely fashion and in any event shall complete the Work no later than twelve (12) months following the date that all necessary or appropriate Governmental Approvals have been obtained. Developer reasonably expects to commence construction of the New Interchange on or about August 15, 2006. In accordance with Article V, written notice shall be provided to Transurban when a significant deviation from the project schedule is anticipated.

Section 2.06 Completion Certificate; Approval. Not later than thirty (30) days prior to the date Developer expects to complete the Work it shall deliver notice to T895 and the Department to that effect. Upon Developer's confirmation that the Work has been completed by delivering the Completion Certificate, T895 shall within five (5) Business Days of receipt of such Completion Certificate commence an inspection of the Work. T895 shall within ten (10) Business Days of the commencement of carrying out the inspection referred to in the previous sentence, either (i) approve the Completion Certificate; or (ii) notify Developer in writing of its decision not to approve the Completion Certificate and state the specific reasons for such decision as well as T895's modifications that, if implemented, will eliminate T895's objections, except that such modifications shall not be in violations of any Governmental Rule. T895 may, in its sole discretion, refuse to approve the Completion Certificate if the Work has not been completed to the extent or to the standard required in this Agreement. If T895 notifies Developer of its decision not to approve the Completion Certificate then Developer shall have a reasonable opportunity to cure the defects stated in T895's notice. Thereafter, T895 shall, within the same time periods provided above, promptly inspect the Work and either (i) approve the Completion Certificate; or (ii) notify Developer in writing of its decision not to approve the

Completion Certificate and state the reasons for such decision (in which case the preceding procedures shall be followed until T895 approves the Completion Certificate).

Notwithstanding the foregoing, completion of the Work must be approved by the Department pursuant to the ARCA, and in no event may the New Interchange be opened for regular public use without such approval. T895 may withhold or delay its approval of the Completion Certificate to the extent the Department's approval is required and has not been obtained, and in such event the approval by T895 shall be deemed as being reasonably withheld or delayed. T895 will coordinate efforts to obtain such approval. T895 may not withhold or delay its approval of the Completion Certificate due to delay in its completion of the New Tolling Facilities occurring for any reason whatsoever, and any costs or expenses associated with such delay shall be borne solely by T895.

Section 2.07 Tolling Generally. The New Interchange shall be subject to tolling at rates determined from time to time in T895's sole discretion. Initially, the rates shall be as set forth on Schedule I.

Section 2.08 Tolling of Construction Traffic.

(a) Construction vehicles used during construction of the New Interchange shall be entitled to use the Toll Road during [normal construction hours] free of charge, subject to a maximum limit equal to \$35,000 (calculated at the main line plaza toll rates from time to time) over the term of the construction for the Work.

(b) To allow and regulate such usage, upon commencement of construction T895 will issue sufficient "non-revenue cards" for use by construction vehicles for the initial phase of construction. Thereafter, not less frequently than monthly, representatives of T895 and Developer will meet to review the number of non-revenue cards needed for the current phase of construction, and either T895 will issue additional cards or Developer will return cards for cancellation so that at any time the number of cards issued for use by construction vehicles is appropriate for the needs of the construction vehicles.

(c) If there is any abusive use of the non-revenue cards by drivers (whether use by non-construction vehicles or use outside normal construction hours), Developer shall be responsible for paying the tolls that would have been paid by such drivers without the benefit of the non-revenue cards. If any such abuse is persistent, T895 may cancel all non-revenue cards for the duration of the Work without compensation to Developer.

(d) Except as provided in the foregoing paragraphs of this Section 2.08, all construction vehicles shall use the mainline plaza for access to the construction site and will be tolled at the prevailing tolls.

Section 2.09 Tolling in the Event of Delay. In the event the New Tolling Facilities are not installed at the time the New Interchange is open to public traffic, Developer and T895 will agree upon a method to allow access to the New Interchange and collect tolls on the traffic using of the New Interchange, provided that T895 may install temporary cash tolling facilities and impose tolls at its then-publicized schedule if another method is not mutually satisfactory. T895 shall use commercially reasonable efforts to install the New Tolling Facilities by such time as the



New Interchange is open for use by the public. Any temporary facilities shall be installed at no expense to Developer. Notwithstanding the foregoing, T895 shall use commercially reasonable efforts to install the New Tolling Facilities by such time as the New Interchange is open for use by the public or, if later, upon initial use of the New Interchange by residential owners or commercial tenants of units within the Development, provided that T895 shall be solely responsible for all costs and expenses associated with such delay.

Section 2.10 Operation, Maintenance and Repair. Following the Completion Date, T895 shall, at its sole cost and expense, operate the New Interchange and provide Routine Maintenance and Major Maintenance for the New Interchange, including replacement of the tolling equipment.

Section 2.11 Cooperation. Developer and T895 shall work together to provide access to and from the Development during its development and afterwards to facilitate the safe and efficient movement of commercial and residential traffic on the Project. Developer acknowledges that T895, Governmental Authorities or other Persons (together, the "Interested Parties") whose interests may be affected by the carrying out of the Work may have other work performed at or near the Project (such work, the "Other Work"). Developer and T895 shall work cooperatively to ensure that the design and performance of the Work are fully and completely coordinated with the Other Work taking into account their concurrent and sequential nature.

Section 2.12 Use of Office Space.

(a) Developer shall pay to T895 \$15,000 within 10 Business Days for the right to use one office within T895's administrative building located within the Project right-of-way, and use (on a shared basis) equipment such as photocopying, fax, and telephones, during the period from the Effective Date to the Completion Date,.

(b) During such period Developer shall maintain in force appropriate policies of general liability insurance protecting Developer against claims for bodily injury, death, and property damage in, upon or about T895's administrative building. Developer shall indemnify and hold harmless T895 from and against all claims, losses, damages and costs suffered or incurred by T895 as a result of or in connection with any accident or damage caused by Developer or its employees, representatives, business invitees or guests.

### **ARTICLE III**

### **WARRANTIES**

Section 3.01 Developer's Warranties. Developer warrants that: (i) the design of the New Interchange conforms to the requirements of this Agreement, Good Industry Practice, all Governmental Rules and all professional engineering principles generally accepted as standards of the industry in the Commonwealth of Virginia; (ii) the Work shall be free of defects, including design defects, errors and omissions; (iii) the Work shall be fit for use for the intended function; (iv) materials and equipment furnished by or on behalf of Developer under this Agreement shall be of good quality and new; and (v) the Work shall meet all of the requirements of this Agreement. Developer warrants the Work for a period of one (1) year commencing from the time of the issuance of the Completion Certificate, and Developer shall remedy any deficiency,

defect, error or non-compliance with such warranty in such manner and at such times as to minimize disruption to the operation of the Project (including the New Interchange). If any part or component of the Work is replaced or repaired during one-year warranty period, then the warranty period in respect of such part or component of the Work shall be extended for an additional twelve months from the date of replacement or repair. On the later of the conclusion of the one (1) year defect period and the date on which all remedies have been completed such that no further remedies are necessary, upon request by Developer a Defect Completion Certificate shall be issued by T895 to Developer. Notwithstanding the foregoing, Developer does not warrant the New Tolling Facilities.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

Section 4.01 Organization; Authority. Developer is duly incorporated under the laws of the Commonwealth of Virginia, has the requisite power, financial resources (subject to the Development's approval by Henrico County and the issuance and sale of bonds by the Community Development Authority) and required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and to perform its obligations hereunder.

Section 4.02 Authorization. Developer has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and each person executing this Agreement has been duly authorized to execute this Agreement.

Section 4.03 Valid, Binding Obligation. This Agreement has been duly authorized, executed and delivered by Developer and constitutes a valid and legally binding obligation of Developer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

Section 4.04 No Conflict. Neither the execution and delivery by Developer of this Agreement nor the consummation of the transactions contemplated hereby is in conflict with or will result in a default under or a violation of the governing instruments of Developer or any other agreements or instruments to which it is a party or by which it is bound.

Section 4.05 No Litigation. There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement.

Section 4.06 Compliance with Laws. Developer is, and will remain, in material compliance with all Governmental Rules applicable to the construction and, subject to the need to obtain Governmental Approvals specified in Section 4.07, completion of the New Interchange. Developer shall maintain all licenses required by Governmental Rules.

Section 4.07 Governmental Approvals. Developer will prepare all studies, applications and other documents in connection with the New Interchange (excluding the New Tolling Facilities) and submit such documents and requests for approval to the appropriate regulatory

agencies. Developer will obtain all Governmental Approvals, each of which will be maintained in full force and effect, and true and correct copies of such Governmental Approvals will be provided to T895. The parties hereto acknowledge that as of the date of this Agreement Developer has not yet obtained (i) the Department's approved final construction plans, (ii) DEQ wetlands permit, (iii) COE wetlands permit, and (iv) the Department entrance permit. Nor has Developer paid the Department for limited access approval. Notwithstanding the foregoing, Developer shall not be responsible for obtaining any studies, or preparing any applications or other documents in connection with the New Tolling Facilities, all of which shall be T895's responsibility.

## **ARTICLE V**

### **DELAYS**

If Developer becomes aware of any event or circumstance which could prevent its performance of any of its obligations hereunder, Developer shall give prompt notice thereof to T895. Developer shall attempt in good faith to minimize any such delay; provided that Developer shall not be obligated to undertake or perform any actions which are prohibited or excused by contract or any Governmental Rule or that would expose Developer to any material risk of liability or to any material expense which is not reasonably expected to be promptly reimbursed or indemnified hereunder. Notwithstanding anything to the contrary, neither party shall be liable for any delay in, or failure of, its performance of any of its obligations under this Agreement if such delay or failure is caused by events beyond the reasonable control of the affected party, including but not limited to any acts of God, governmental embargoes, restrictions, quarantines, strikes, riots, wars or other military action, civil disorder, acts of terrorism, fires, floods, vandalism or sabotage or the acts of third parties, provided such event does not arise by reason of (i) any act or omission by a party or its contractors or subcontractors, or their respective officers, directors, agents, employees, in breach of the provisions of this Agreement, (ii) the negligence or misconduct of a party or its contractors or subcontractors, (iii) lack of insufficiency of funds, or (iv) any strike or labor dispute involving a party or its contractors or subcontractors or attributable to any act or omission of a party or its contractors or subcontractors.

## **ARTICLE VI**

### **DISPUTE RESOLUTION**

Section 6.01 Procedure. The parties shall attempt, in good faith, to resolve or cure all disputes and claims but disputed Events of Default by mutual agreement in accordance with this Article VI before initiating any legal action or attempting to enforce any rights or remedies hereunder (including termination), at law or in equity (regardless of whether this Article VI is referenced in the provision of this Agreement which is the basis for any such dispute). If either party believes that an Event of Default or a dispute under this Agreement has arisen, such party shall give written notice thereof to the other party which notice shall describe in reasonable detail the basis and specifics of the claimed Event of Default or dispute. Within five (5) days after delivery of such notice, the designated representatives of both parties shall meet to discuss and attempt to resolve or cure such dispute or claimed Event of Default. If such representatives are unable to resolve the dispute or claimed Event of Default within fifteen (15) days after delivery of such notice, the matter shall be referred to a "Senior Officer" of Developer and a "Senior

Officer" of T895 for resolution or cure. If such Senior Officers are unable to agree on an appropriate cure or resolution within ten (10) days after the matter has been referred to them the parties may have recourse to mediation, arbitration, or other alternative dispute resolution device of their mutual selection. If the parties cannot agree on an alternative dispute resolution device, each party may pursue its legal remedies, including, but not limited to, any rights available pursuant to Section 8.03.

Section 6.02 Continuation of Work. Pending final resolution of any dispute, the parties shall continue to fulfill their respective obligations under this Agreement.

## **ARTICLE VII** **TERMINATION**

This Agreement may not be terminated except:

- (a) by mutual agreement of the parties;
- (b) by either party by written notice to the other party if the Effective Date has not occurred by June 30, 2006; or
- (c) pursuant to the remedy provisions of Section 8.03.

## **ARTICLE VIII** **DEFAULT**

Section 8.01 Events of Default. The following events are events of default ("Events of Default") by either party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which has or might have the effect of preventing such party from complying with the terms of this Agreement:

(A) Failure to make any payment required to be made hereunder without the prior written mutual agreement of the parties, if such failure shall continue for thirty (30) days after written notice thereof has been given to the non-paying party; or

(B) Failure to comply in any material respect with any material term, provision or covenant of this Agreement (other than the payment of sums to be paid hereunder) or any Governmental Rule applicable to the New Interchange, if such failure continues for thirty (30) days after written notice thereof has been given to the non-performing party; provided, however, if such failure cannot reasonably be cured within such thirty (30) days and the non-performing party has commenced, with best efforts and in good faith, to cure such failure, such thirty (30) day period shall be extended for such longer period as shall be necessary for such party to cure the failure, but in no event shall be extended for more than sixty (60) days without the prior written mutual agreement of the parties.

Section 8.02 Bankruptcy. Subject to the rights or remedies it may have, either party shall have the right to terminate this Agreement, effective immediately, if, at any time, the other party shall file any petition under any bankruptcy law, or seek the protection of any federal or

state bankruptcy or insolvency law or debtor relief status or consent to or acquiesce in the filing of any such petition or the seeking of any such protection.

Section 8.03 Remedies. If (i) an Event of Default occurs hereunder and such Event of Default is not cured in accordance with the requirements of Section 8.01, or (ii) if an event described in Section 8.02 occurs, then this Agreement may be terminated immediately by the non-defaulting or non-subject, as applicable, party, without obligation to or recourse by the defaulting party. If a termination pursuant to this Section 8.03 occurs, the terminating party shall have all rights and remedies allowed at law or in equity.

## **ARTICLE IX**

### **INDEMNIFICATION**

Section 9.01 Developer Indemnity. Developer shall indemnify and hold T895 harmless from any damage, loss, liability, cost or expense (including reasonable attorneys' fees) incurred by T895 or any third party to the extent that such damage, loss, liability, cost or expense arises out of or is occasioned by the planning or construction of the New Interchange (excluding the New Tolling Facilities) by Developer, its contractors or subcontractors, or their respective officers, directors, agents, employees or Affiliates, its business invitees, actual or potential residents or occupants of the Development, or other Persons under Developer's supervision or control or for whom Developer or T895 may be contractually or legally responsible, and any damage, loss, liability, cost or expense (including reasonable attorneys' fees) incurred by T895 or any third party as a result of Developer's breach of its obligations under this Agreement except to the extent such damage, loss, liability or expense results from T895's willful misconduct, gross negligence, or breach of its obligations under this Agreement. This Section shall survive termination of this Agreement.

Section 9.02 T895 Indemnity. T895 shall indemnify and hold Developer harmless from any damage, loss, liability, cost or expense (including reasonable attorneys' fees) incurred by Developer or any third party to the extent that such damage, loss, liability, cost or expense arises out of or is occasioned by the planning, construction or operation of the New Tolling Facilities or, following the Completion Date, the operation of the New Interchange by T895, its contractors or subcontractors, or their respective officers, directors, agents, employees or Affiliates, its business invitees, actual or potential residents or occupants of the Development, or other Persons under T895's supervision or control or for whom T895 may be contractually or legally responsible, and any damage, loss, liability, cost or expense (including reasonable attorneys' fees) incurred by Developer or any third party as a result of T895's breach of its obligations under this Agreement except to the extent such damage, loss, liability or expense results from Developer's willful misconduct, gross negligence, or breach of its obligations under this Agreement. This Section shall survive termination of this Agreement.

## **ARTICLE X**

### **OBLIGATION TO REFRAIN FROM DISCRIMINATION**

(a) Developer covenants and agrees that it shall not discriminate and it shall require all contractors for the Work not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of

any sensory, mental or physical handicap in carrying out the Work, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, contractors, subcontractors and vendors for the Work; provided, however, that the prohibition against discrimination on the basis of sensory, mental or physical handicap shall not apply if the particular disability prevents the proper performance of the particular person involved.

(b) Developer shall conduct its activities in connection with the Work in compliance with all other requirements imposed pursuant to Title 2.1, Chapter 25, Sections 374 et seq., Code of Virginia; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Americans With Disabilities Act of 1990; and applicable rules and regulations including but not limited to provisions of Title 23, Code of Federal Regulations and Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 1 (49 C.F.R. Part 21), which are applicable to the Project by reason of use of federal funds for non-construction activities (such as design, Project Right of Way acquisition and Utility Relocation), and as said regulations may be amended.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.01 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent may be given or withheld in such party's sole discretion; provided, however, that (a) Developer may, with T895's consent (not to be unreasonably withheld or delayed), assign all of its right, title and interest under this Agreement to any entity providing Developer with construction, term and/or equity financing or refinancing with respect to the New Interchange, (b) T895 may assign this Agreement to lenders providing financing relating to the Project as collateral security for the obligations pertaining to such financing; and (c) T895 may assign this Agreement to the Department.

Section 11.02 Governing Law, Jurisdiction, Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions. Should any court proceedings arise in relation to this agreement, the parties hereto agree that Henrico County courts shall be the appropriate venue for such proceedings.

Section 11.03 Independent Contractor. Nothing contained in this Agreement and no action taken by any party to this Agreement shall be (A) deemed to constitute any party or any of such party's employees, agents or representatives to be an employee, agent or representative of any other party; (B) deemed to create any company, partnership, joint venture, association or syndicate among or between any of the parties; or (C) except as contemplated under this Agreement, deemed to confer on any party any expressed or implied right, power or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of any other party, except as expressly authorized in writing.

Section 11.04 Notice. All notices, requests, consents, demands and other communications (collectively, "notices") required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice and shall be given to each party at its

address or fax number set forth in this Section 10.06 or at such other address or fax number as such party may hereafter specify for the purpose by notice to the other party and shall be either delivered personally or sent by fax or telegraph or registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service. Notices shall be sent to the following addresses:

(A) If to T895, to:

With a copy to:

Transurban (895) US Holdings LLC  
Level 43, 405 Lexington Avenue  
New York, NY 10017  
Attention: Ken Daley  
Telephone: (646) 278-0870  
Facsimile: (646) 278-0839

(B) If to Developer to:

WF Hunt, LLC  
11237 Nuckols Road  
Glen Allen, VA 23059  
Attention: Daniel T. Schmitt  
Fax: 804-762-9769

With a copy to:

Hirschler Fleischer  
Prior to December 1, 2006:  
701 E. Byrd Street  
Richmond, Virginia 23219  
Attention: Charles H. Rothenberg

OR:

P.O. Box 500  
Richmond, Virginia 23218-0500  
Attention: Charles H. Rothenberg  
Fax: (804) 644-0957

Section 11.05 Usage. This Agreement shall be governed by the following rules of usage: (i) a reference in this Agreement to a Person includes, unless the context otherwise requires, such Person's permitted assignees; (ii) a reference in this Agreement to a law, license, or permit includes any amendment, modification or replacement to such law, license or permit; (iii)

accounting terms used in this Agreement shall have the meanings assigned to them by GAAP; (iv) a reference in this Agreement to an article, section, exhibit, schedule or appendix is to an article, section, exhibit, schedule or appendix of this Agreement unless otherwise stated; (v) a reference in this Agreement to any document, instrument or agreement shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in substitution thereof, and shall mean such document, instrument or agreement, or replacement thereof, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time; (vi) unless otherwise specified, the words "hereof," "herein" and "hereunder" and words or similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and (vii) the words "include" and "including" and words of similar import used in this Agreement are not limiting and shall be construed to be followed by the words "without limitation", whether or not they are in fact followed by such words.

Section 11.06 Entire Agreement. This Agreement (including all appendices and exhibits thereto) constitutes the entire agreement and understanding of the parties thereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

Section 11.07 Amendment. Neither this Agreement nor any of the terms hereof may be amended, supplemented, waived or modified, except pursuant to a document signed by both parties.

Section 11.08 Confidential Information. Except as required by applicable law or binding agreement, no party shall, without the prior written consent of the other parties, disclose any confidential information obtained from the other party to any third parties, other than to consultants or to employees who have agreed to keep such information confidential as contemplated by this Agreement and who are reasonably believed to need the information to assist such party with the exercise or performance of any rights and obligations provided to, or imposed upon, such party in such document.

Section 11.09 Third Party Beneficiaries. Except as set forth in Article IX hereof, this Agreement is intended to be solely for the benefit of the parties hereto and their permitted assignees and the Department and is not intended to and shall not confer any rights or benefits to the general public or any other third party not a signatory hereto.

Section 11.10 Discharge of Obligations. With respect to any duties or obligations discharged hereunder by Developer, Developer may discharge such duties or obligations through the personnel of an Affiliate of Developer; provided that, notwithstanding the foregoing, Developer shall remain fully liable hereunder for such discharged duties and obligations.

Section 11.11 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.



Section 11.12 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns.

Section 11.13 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed as of the date first above written.

WF HUNT, LLC, a Virginia limited liability company

By: HHHUNT CORPORATION,  
a Virginia corporation, its Manager

By: 

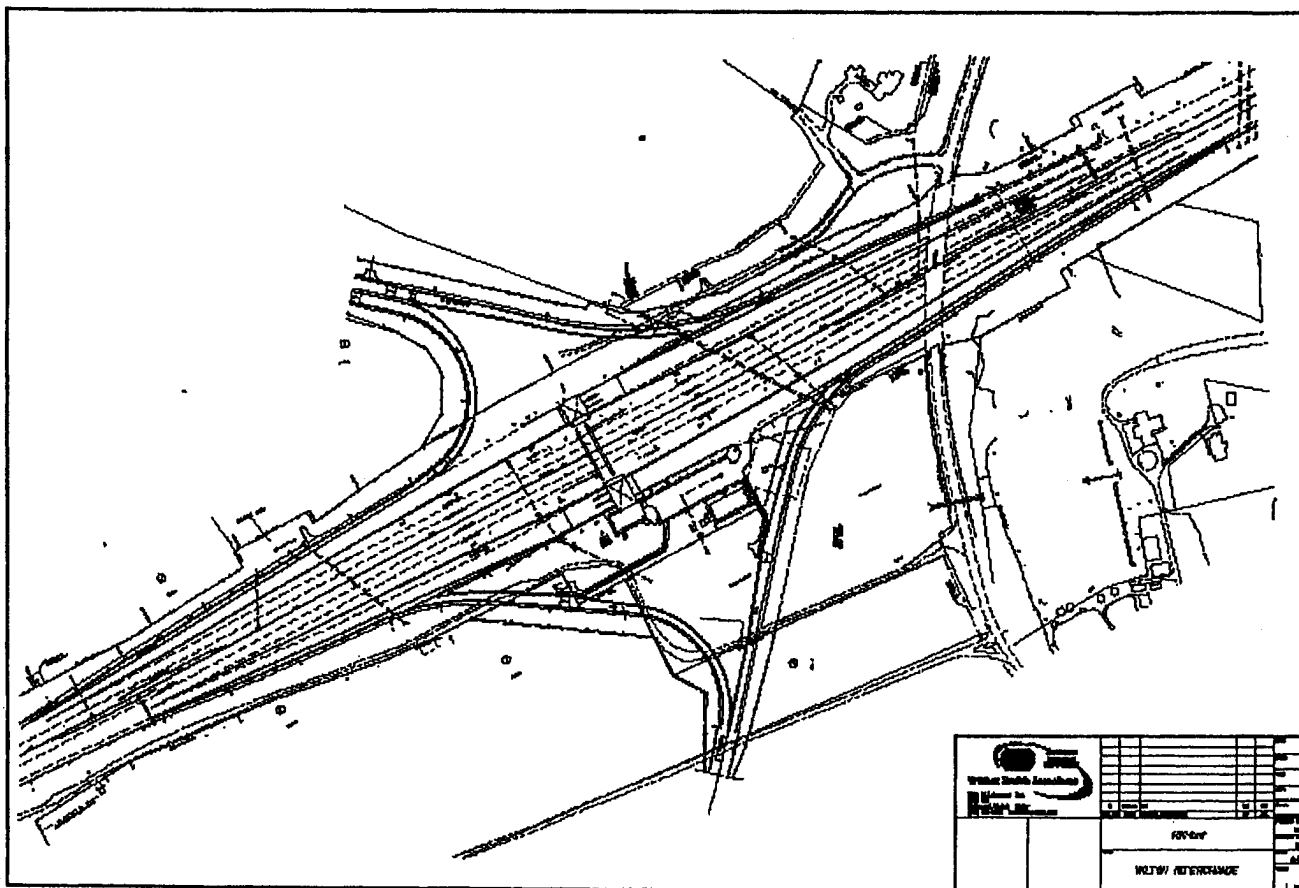
Daniel T. Schmitt  
Vice President

TRANSURBAN (895) LLC, a Delaware limited liability company

By: 

Name: MICHAEL KULPER  
Title: VICE PRESIDENT

### Preliminary Design; Map



Standards, Procedures and Quality Control

**Manuals, Standards and Procedures**

The Developer shall perform all of its responsibilities with respect to the New Interchange in accordance with the documents listed below, as they may be revised, amended or supplemented from time to time ("Manuals, Standards and Procedures"):

- Road and Bridge Specifications (2002), and Special Provisions and Copied Notes (As issued)
- VDOT Tree Trimming Policy
- Drainage Manual (2002)
- Road Design Manual, Volumes I and II (2005)
- Road and Bridge Standards - Volumes I and II (2001)
- Maintenance Policy Manual (January 1994)
- Virginia Operational Information System (VOIS) Procedure Manual (November 2005)
- Maintenance Rating Program Manual (MRP-2004)
- Land Use Permit Manual (Current edition)
- AASHTO Standard Specifications for Highway Bridges (1992) (with annual revisions)
- Virginia Modifications to the AASHTO Standard Specifications for Highway Bridges
- AASHTO Standard Specifications for Structural Support for Highway Signs, Luminaries and Traffic Signals
- Virginia Work Area Protection Manual (2003)
- Manual on Uniform Traffic Control Devices (November 2003)

The Developer shall perform its Work such that it produces results that at least equal those achieved pursuant to the Manuals, Standards and Procedures. The Developer, however, is not required to comply with any prescriptive requirements in the Manuals, Standards and Procedures that are inconsistent with applicable Laws and Regulatory Approvals and the Project Agreements.

In addition to the Manuals, Standards and Procedures, the Developer should also review the following documents for informational purposes so that it will better understand what the Department considers to be Good Industry Practice within the State:

- Construction Manual (January 2002)
- DBE Directory (Published monthly)
- SWAM (Small, Women Owned and Minority Vendors) Directory
- Roadside Design Guide (AASHTO-January 1996)
- Environmental Permit Manual (May 1996)
- Environmental Document Handbook (January 1994)

- Instructional and Informational Memoranda (Revised as needed)
- Public Involvement Policy and Procedures Manual (2005):
- VDOT Erosion and Sediment Control and Stormwater Management Program Manual (Revised as needed)
- Culvert Repair Practices Manual, Volumes I and II (FHWA-May 1995)
- Bridge Maintenance Training Manual (FHWA-May 1994)
- Asset Management "Best Practices" (October 2004)
- AASHTO Maintenance Manual (1999)
- Memorandum of Agreement (MOU) with the Department of Motor Vehicles (DMV)
- Hurricane Evacuation Plan (Hampton Roads and Richmond District)
- Asset Management System Data Dictionary (Current version)
- VDOT Enterprise Data Management Policy (DPM 1-22)
- Data Modeling Guidelines
- Geo-Spatial Data Standard (TIMSC Policy 01-02)
- VDOT Data Object Naming Standards
- VDOT Geospatial Data Technical Standard
- VDOT Standard Organizational Codes
- Global Positioning Systems (GPS) (COV Guide 94-3)
- Information Technology Security Guideline (COV ITRM Guideline SEC2001-01.1)
- Information Technology Security (COV Policy 90-1)
- Information Technology Security Standard (COV ITRM Standard SEC2001-01.1)
- Model Virginia Map Accuracy Standards (COV Guide 92-1)
- Spatial Data Transfer Standard (SDTS) (COV Std 94-1)
  
- Material Manual of Instructions (February 2005)
- Right of Way Manual of Instructions - Volumes I and II (July 1999)
- 1994 Metric Road and Bridge Standards (Volumes I and II) (1994)
- Condition Evaluation of Bridges (1995)
- Structure and Bridge Instructional and Information Memos (Revised as needed)
- Pavement Markings Study Guide (1995)
- Traffic Engineering Division Memoranda (Revised as needed)

### **Quality Assurance and Quality Control**

The Developer is required to implement a complete quality assurance and quality control program, which includes monitoring of its own performance. It shall be the Developer's responsibility to ensure all contractors and subcontractors comply with the requirements of the quality assurance and quality control program.